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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 111

[Docket ID: DOD-2016-OS-0116]

RIN 0790-AI99

Transitional Compensation (TC) for Abused Dependents

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: Transitional compensation is one of the many resources available to victims of domestic abuse. The Transitional Compensation for Abused Dependents program is a congressionally-authorized program which provides temporary monetary payments and military benefits to dependents of Service members, when the member has been separated from the military due to a dependent-abuse or child abuse offense. If adopted as final, this rulemaking would establish requirements and describes authorized benefits for an abused spouse and/or abused children affected by the separation or forfeiture of pay and allowances of a military Service member.

DATES: Comments must be received by [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: CDR David T. Clark, 703-693-1068.

SUPPLEMENTARY INFORMATION:

Legal Authority for this Program

This program was established by Congress for abused dependents of military personnel based on (P.L. 103-160) in 1994. This rule consolidates and clarifies existing procedural requirements established by the Act and currently found in internal DOD guidance.

The legislation authorized temporary payments for families in which the active duty soldier had been court-martialed with a qualifying sentence (forfeiture of all pay and allowances, or bad conduct discharge, or dishonorable discharge, or in the instance of officers and commissioned warrant officers, dismissal from the Service) or was being administratively separated from the military as a result of a dependent-abuse offense. DOD began authorizing payments in August 1995 in accordance with DoD Instruction (DoDI) 1342.24, Transitional Compensation for Abused Dependents which was last updated in January 1997 and can be found at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134224p.pdf>.

Eligibility Requirements for the Program

To be eligible for the benefit a family member (spouse or dependent child) must have been living in the home of the Service member. The Service member must have been administratively separated for a dependent-abuse offense; or convicted of a dependent-abuse offense and either separated under a court-martial sentence or sentenced to a forfeiture of all pay and allowances. A dependent-abuse offense must be the basis for the administrative separation or conviction, although it does not have to be the primary reason. Active duty victims of dependent-abuse are also eligible for transitional compensation, when the offender is also active duty.

Summary of Benefits Under this Program.

- **Amount of the benefit:** The compensation amount is based on the Dependency and Indemnity Compensation, which changes annually. Current amounts can be found at the Department of Veterans Affairs Dependency and Indemnity Compensation website at https://benefits.va.gov/compensation/types-dependency_and_indemnity.asp.
- **Length of the benefit:** The transitional compensation is available for the longer of 12 months or the unserved portion of the Service member's obligated active service. Compensation will not extend beyond 36 months.
- **Maintaining eligibility:** Individuals become ineligible for compensation and benefits if they remarry or move back in with the former Service member while receiving benefits.
- **Recertifying eligibility:** If compensation is available for more than 12 months, recertification is required annually to ensure eligibility for transitional compensation.
- **Other benefits:** As part of the Transitional Compensation Program, individuals may be eligible for other benefits including medical care, exchange privileges and commissary privileges.

Transitional compensation is one of the many resources available to military families. Each installation's Family Advocacy Program or legal assistance office can help a family apply for transitional compensation as well as other means of assistance.

Per DoD's Financial Management Regulation at

https://comptroller.defense.gov/Portals/45/documents/fmr/current/07b/07b_60.pdf, transitional compensation payments are not taxable. Transitional compensation recipients should not expect to receive a Form 1099 for tax purposes. Also, recipients need not report transitional compensation payments on their tax return.

According to DoD Policy, transitional compensation for a dependent spouse or former spouse is at the same rate as defined in 38 U.S. Code §1311 – Dependency & Indemnity Compensation to a Surviving Spouse. There is also an additional amount for children under this section. For children without a mil-spouse parent, the amount is the same as the rate defined in 38 U.S. Code §1313 – Dependency & Indemnity Compensation to Children. You can find annual updates to these payments on the DoD Comptroller's website at https://comptroller.defense.gov/Portals/45/documents/fmr/Volume_07b.pdf.

EXPECTED IMPACT OF THE PROPOSED RULE

The intent of this program is to encourage victims of dependent-abuse to come forward and report abuse, provide assistance to victims to separate from the abuser, inform the victims of resources available to them as a victim of dependent-abuse, ensure the safety and well-being of the victims, and ensure the Department of Defense does not leave a spouse and family financially destitute when the abusing Service member is discharged from the military for a dependent-abuse offense. In accordance with statute, the rate of payment varies based on the rank of the Service member, but it is designed to cover living expenses such as food, clothing and housing. The Department spends approximately \$17M each fiscal year in transitional compensation

payments. This proposed rule publishes instructions internal to DoD without any changes to the policies already in place, and therefore will not result in any changes to the number of TC recipients or the amount they are paid.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This proposed rule is not expected to be subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.

2 U.S.C. Ch. 25, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This rule

will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Ch. 6)

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

Section 111.6(f)(1) of this proposed rule contains information collection requirements. These reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 0704-0578, “Transitional Compensation for Abused Dependents (TCAD).”

The applicable Systems of Records Notice (SORN) is T7347b, Defense Military Retiree and Annuity Pay System Records (January 7, 2009, 74 FR 696).

[http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-](http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570196/t7347b/)

[View/Article/570196/t7347b/](http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570196/t7347b/). The Privacy Impact Assessment (PIA) is available at

[https://www.dfas.mil/dam/jcr:5cf8a068-89c7-47eb-b844-](https://www.dfas.mil/dam/jcr:5cf8a068-89c7-47eb-b844-1e2020ed5f73/Defense%20Retiree%20and%20Annuitant%20Pay%20System%20(DRAS)%202016.pdf)

[1e2020ed5f73/Defense%20Retiree%20and%20Annuitant%20Pay%20System%20\(DRAS\)](https://www.dfas.mil/dam/jcr:5cf8a068-89c7-47eb-b844-1e2020ed5f73/Defense%20Retiree%20and%20Annuitant%20Pay%20System%20(DRAS)%202016.pdf)

[%202016.pdf](https://www.dfas.mil/dam/jcr:5cf8a068-89c7-47eb-b844-1e2020ed5f73/Defense%20Retiree%20and%20Annuitant%20Pay%20System%20(DRAS)%202016.pdf); or <https://www.dfas.mil/dfas/foia/privacyimpactassessments.html>.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has

Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 111

Abuse, Dependent Children, Transitional Compensation.

Accordingly, 32 CFR part 111 is proposed to be added to read as follows:

PART 111—TRANSITIONAL COMPENSATION FOR ABUSED DEPENDENTS

Sec.

111.1 Purpose.

111.2 Applicability.

111.3 Definitions.

111.4 Policy.

111.5 Responsibilities.

111.6 Procedures.

Authority: 10 U.S.C. 1059.

PART 111—TRANSITIONAL COMPENSATION FOR ABUSED DEPENDENTS

§111.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the payment of monthly Transitional Compensation (TC) to dependents of Service members separated for dependent abuse.

§111.2 Applicability.

This part applies to The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the

Office of the Inspector General of the Department of Defense (DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD.

§111.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

Dependent abuse offense. Conduct by an individual while a Military Service member on active duty for a period of more than 30 days that involves abuse of a then-current spouse or a dependent child of the Service member and that is a criminal offense, under the Uniform Code of Military Justice, or another criminal code applicable to the jurisdiction where the act of abuse is committed. The term “involves abuse of the then-current spouse or a dependent child” means that the criminal offense is against the person of that spouse or a dependent child. Crimes that may qualify as dependent-abuse offenses include sexual assault, rape, sodomy, assault, battery, murder, and manslaughter. (This is not an exhaustive or exclusive listing of dependent-abuse offenses, but is provided for illustrative purposes only. The facts and circumstances of a particular case should always be interpreted in a manner most favorable to the spouse or a dependent child of the member when determining whether the conduct constitutes a “dependent abuse offense.”)

Dependent child. As defined in 10 U.S.C. 1059.

Exchange stores. The Army and Air Force Exchange Service, the Navy Exchange, the Marine Corps Exchange, and the Coast Guard Exchange.

Parent. The natural father or mother, or father or mother through adoption. For purposes of TC, parent does not include persons who have stood “in loco parentis” to a dependent child.

Secretary concerned. Includes the Secretary of the Military Departments and the Secretary of the Department of Homeland Security, when applicable.

Service member. Includes former Service members, where appropriate.

Spouse. An individual married to a Service member, but does not include a domestic partner.

§111.4 Policy.

The DoD will make monthly TC payments and provide other benefits described in this part for spouses or dependents of Service members who meet the eligibility requirements of 10 U.S.C. 1059 and this part.

§111.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) Establishes and prescribes procedures for the payment of TC to dependents of Service members separated for dependent abuse.

(2) Oversees compliance with this part.

(b) The Secretaries of the Military Departments and the Secretary of the Department of Homeland Security, when applicable:

(1) Appoint representatives to coordinate requests for TC, approve requests (except exceptional eligibility requests), and forward those requests for payment in accordance with Chapter 60, Volume 7B of DoD 7000.14-R, “Department of Defense Financial Management Regulations (FMRs): Military Pay Policy—Retired Pay” (available at

http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_07b.pdf).

(2) Review and approve or disapprove requests for TC benefits in accordance with the exceptional eligibility authority in accordance with 10 U.S.C. 1059. This responsibility may not be delegated.

(3) Ensure dependents who are victims of a dependent-abuse offense are aware of their eligibility to apply for TC.

(4) Establish departmental guidance to implement this part.

§111.6 Procedures.

(a) Recipients of payment. The Secretary concerned makes TC payments to Service member dependents, former dependents, or court-appointed guardians as described by 10 U.S.C. 1059. If a recipient is incapable of handling his or her own affairs, payments may be made only to a court-appointed guardian.

(b) Payments.

(1) Payments begin in accordance with 10 U.S.C. 1059.

(2) Payments must continue for at least 12 months and no more than 36 months, as prescribed by the applicable Secretary of the Military Department. When the unserved portion of the Service member's obligated active duty service, as of the starting date of payment, is greater than 12 months and less than or equal to 36 months, payments continue for no less than the unserved portion.

(i) For enlisted Service members, obligated active duty service is the time remaining on their terms of enlistment.

(ii) For officers, obligated active duty service is indefinite unless an officer has a date of separation established. In that case, it is the time remaining until the date of separation.

(3) The amount of payment will be in accordance with 10 U.S.C. 1059. Partial month entitlements are pro-rated. If a recipient dies, arrears of payments are not paid.

(4) Payments will be stopped in accordance with 10 U.S.C. 1059.

(i) Payments will end on the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that the payment of TC will stop.

(ii) Recipients are not required to repay amounts of TC received before the effective date payment is stopped, in accordance with paragraph (b)(4)(i) of this section; however, TC may be recouped for erroneous payments or payments made based on false information provided.

(c) Forfeiture provisions. In addition to 10 U.S.C. 1059, the following requirements apply:

(1) The former spouse receiving TC must notify the Defense Finance Accounting Services (DFAS) within 30 days of remarriage or if the spouse or former spouse begins residing in the same household as the spouse or former spouse.

(2) If a Service member's dependent child is not living in the same household as the spouse or former spouse who forfeits TC, payments are made to each dependent child or his or her court-appointed guardian.

(3) In order to continue benefits, the spouse or former spouse must annually certify to DFAS that he or she is not remarried or is not cohabitating with the Service member separated for the abuse. DFAS will provide a form for recertification of benefits.

(d) Coordination of benefits. A spouse or former spouse may not concurrently receive TC payments and retired pay payments pursuant to 10 U.S.C. 1059 and 1408(h), respectively. If a spouse or former spouse is eligible for both TC payments and retired pay payments, the spouse or former spouse chooses which of the two payments to receive. If the spouse or former spouse receives TC payments and later receives payments from a Service member's retired pay, any TC received concurrently with retired pay must be recouped.

(e) Source of funds. TC must be paid from operations and maintenance funds of the Department of the Service member.

(f) Application of procedures. An individual must initiate a request for TC through a Service-appointed representative. The Service-appointed representative:

(1) Collects data and validates the claim using DD Form 2698 (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2698.pdf>).

(2) Approves payment and forwards the application to DFAS unless otherwise submitted by the Secretary concerned in accordance with 10 U.S.C. 1059.

(g) Commissary and exchange benefits

(1) A recipient of TC is entitled to use commissary and exchange stores while receiving payments.

(2) If a recipient entitled to use commissary and exchange stores is also entitled to use commissary and exchange stores under another provision of law, the entitlement is determined under the other provision of law and not paragraph (g)(1).

(h) Medical benefits.

(1) The Secretary concerned will determine appropriate medical and dental care eligibility for TC recipients and affected dependents. At a minimum, an abused dependent who is receiving TC in accordance with paragraph (a) of this part may receive medical and dental care, including mental health services, in facilities of the military services or through the TRICARE program as outlined in 10 U.S.C. 1076 and 1077.

(2) Dental care may be provided on a space-available basis in facilities of the military services.

(3) Eligible dependents of a member who is retirement eligible, but who loses eligibility for retirement pay because of dependent-abuse misconduct, may receive medical and dental care in accordance with 10 U.S.C. 1408(h).

Dated: October 29, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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